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An address by
Lawrence B. Elliman

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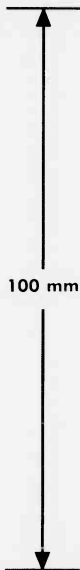
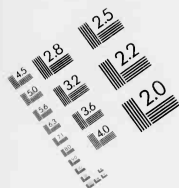
An address by Lawrence B. Elliman before the
New York metropolitan association of real estate
boards, at the Hotel Commodore, New York, on
Thursday, January 27th, 1938. 1938,
16 p., 21 cm.

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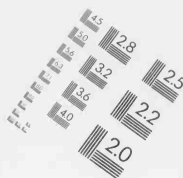
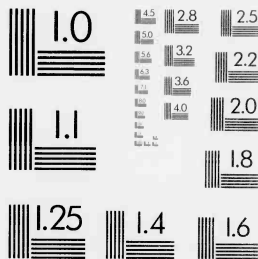
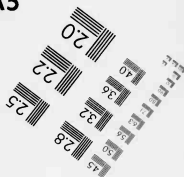
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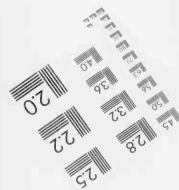


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A N A D D R E S S

by

LAWRENCE B. ELLIMAN

BEFORE THE NEW YORK METROPOLITAN
ASSOCIATION OF REAL ESTATE BOARDS,
AT THE HOTEL COMMODORE, NEW YORK,
ON THURSDAY, JANUARY 27th, 1938.

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Box 436

GROSS OVERASSESSMENT of real property in this city has attained such proportions that our old, familiar dictum, "The power to tax is the power to destroy," now assumes a menacing significance. No longer may that dictum be viewed with detachment as a sonorous, legal-sounding platitude. Considered against the background of recent and present assessments, "The power to tax is the power to destroy" appears as a disturbing truth, one whose unpleasantness stalks our consciousness in defiance of efforts to banish it.

Developments in the field of assessed valuation, particularly as epitomized in our Borough of Manhattan, have gone far toward raising the spectre of destruction by taxation—and it is a form of destruction which involves not only property interests but the annihilation of fundamental rights as well. Through continued violation of the due process clause of the Fourteenth Amendment to the Federal constitution, it strikes at the very basis of democratic government.

That statement is no mere rhetorical thrust. Nor is it a matter of personal opinion. It is the carefully considered judgment of the supreme tribunal of the nation, expressed as the result of a suit brought in the Federal Courts by the Great Northern Railway Company. The company sought to enjoin the State Board of Tax Commissioners of North Dakota against collection of about 40%

LAWRENCE B. ELLIMAN

*President of Pease & Elliman, Inc.,
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Board of New York, Chairman of the
Tax Committee of the Real Estate
Board of New York, Vice-President of
the Chamber of Commerce of the State
of New York, Chairman of the Com-
mittee on Certiorari Proceedings of the
Chamber of Commerce of the State of
New York.*

of the 1933 taxes levied on its real property in that state. The Supreme Court's opinion, delivered by Mr. Justice Butler, declared

"The board's failure to consider the enormous diminution in value of petitioner's property caused by the 1929 collapse and the progress of the depression is, within the principles of our decisions, the *equivalent in law of intention* to make a grossly excessive assessment in 1933 in *disregard of petitioner's rights under the due process clause* of the Fourteenth Amendment."

In order that you may get the full significance of this expression by the Supreme Court of the United States, I will read it again: "The board's"—meaning the North Dakota Board of Tax Commissioners—"the board's failure to consider the *enormous diminution* in value of petitioner's property caused by the 1929 collapse and the progress of the depression is, within the principles of our decisions, the *equivalent in law of intention*"—Mark the word intention with its implication of *deliberate injustice, of preconceived violation of rights*. But let us get on with the opinion: "Of *intention* to make a *grossly excessive assessment* in 1933 in *disregard of petitioner's rights under the due process clause* of the Fourteenth Amendment." Such is the judgment of the highest tribunal of justice we recognize.

How can we determine whether or not such rights under the due process clause of the Fourteenth Amendment are being disregarded here in New York? The Department of Taxes and Assessments has itself pointed the method. It has by precedent indicated the yardstick for gauging the justice and fairness of realty assessments. It established the procedure, for all time and for all students of the subject—and it did so under a fusion administration, the last previous fusion administration of the city.

Seeking to prove that New York real estate was *not under-*

assessed, as was charged at the time, Mr. Lawson Purdy, probably the most favorably known head of the tax department in the history of the city, built his case upon *recorded sales* as the *true indication of value* in his report to Mayor John Purroy Mitchel March 31, 1916.

This official document of the Department of Taxes and Assessments is a matter of printed record. I hold here a copy. Let me read from one of Mr. Purdy's introductory sections:

"For several years past," he stated, "there has been printed in this report a table of the sales for the preceding year showing the consideration when known with the assessed value of the same property and the ratio between the assessed value and the stated considerations. This table has been presented annually to the State Board of Equalization. Objection is made by those who desire to show that assessments in the City of New York are below full value, and that there are included in the list foreclosure sales which often indicate a lower value for the property than it actually has. On the other hand, there are among these transfers sales of property under such circumstances that the price is in excess of the ordinary market value. The evidence indicates that assessments of real estate in this city are at full value."

On the following page Mr. Purdy includes a table showing that during the preceding year there had been 2,574 sales in Manhattan in which total considerations of \$153,348,695 were paid for properties having an assessed valuation of \$158,591,700. These figures he cites as *proving* that real property in the borough was assessed, on the *average*, at 104% of its actual value as indicated by the sales.

Let us apply precisely the same formula—with one exception—to statistics covering 1937 sales and assessments. The one exception is essential. You will note that Mr. Purdy stated the sales totals quoted in his report included foreclosures and other forced sales. To include such transfers at the present time would indicate over-

assessment of so gross a degree as to approach actual ultimate confiscation.

So to be absolutely fair let us restrict our observations to actual, bona fide, open market sales—transactions concluded between willing buyers and willing sellers. Accurate data covering such transactions in Manhattan is available, for complete statistics covering all open-market sales in Manhattan for the full year 1937 have been compiled by The Real Estate Board of New York. I have them right here.

During 1937 a total of 7,576 property transfers were recorded in New York County. Exhaustive examination of these transfers by The Real Estate Board shows that after excluding foreclosures, transfers to mortgagees in lieu of foreclosure, family conveyances, dummy transfers and the like, there were 2,353 actual, bona fide, open-market sales. Prices paid in these sales totalled \$150,133,174. The properties sold were assessed in the aggregate at \$181,157,200. I will repeat these figures so that those making notes may check them carefully:

2,353 open-market sales.

Total prices—\$150,133,174.

Total assessed valuations—\$181,157,200.

By precisely the same method used by the Department of Taxes and Assessments to disprove *underassessment* these figures reveal an average assessment of real property at 120.66% of its actual market value—an average *overassessment* of nearly 21%! Such a degree of overassessment means *overtaxation* to the tune of *millions upon millions* of dollars.

These statistics are not based upon isolated or exceptional instances. Nor are they based upon a few sales in one or another

section of the borough. Nor was any especial period chosen. The figures cover *all* of the bona fide, open-market sales made throughout the length and breadth of the borough during *the last entire calendar year*.

The statement has been made recently that overassessment does not really involve overtaxation because fair and equitable assessment would necessitate a higher tax rate. That is an utterly misleading statement.

The 1937 Manhattan tax assessment roll totalled \$8,252,020,-105. The 1937 tax rate in Manhattan (including 81.2 points for debt service) was 2.76. This meant a total tax bill of \$227,755,-754.90 against holders of real property.

Applying the average overassessment of 20.66%, shown by actual sales, to the aggregate assessed valuations for the borough, it appears that assessments based upon *actual market value* would total \$6,839,068,544. The state constitution limits taxes on real estate to 2% of assessed valuation plus debt service. With the debt service requiring 81 points, we see that the *maximum* tax rate could have been no more than 2.81. Applying this rate to a total assessed valuation of \$6,839,068,544, we see that the maximum amount collectible would be \$192,177,826.09. Deduction of this figure from \$227,755,754.90 shows *overtaxation* by reason of *overassessment* to the tune of \$35,577,928.81 in the Borough of Manhattan alone that could not possibly have been permitted by an increase in the tax rate if the rate had gone to the very limit permitted by the constitution. That is out!

Manhattan figures have been quoted because the very careful survey and analysis of all recorded realty sales by The Real Estate Board of New York have made accurate, borough-wide data available. Similar information covering the other boroughs is not, inso-

far as I know, to be had. Yet there is no reason to suppose that Manhattan is alone with respect to overassessment. There are plenty of instances given by reputable brokers of sales in other boroughs far below assessed valuations.

The situation in Manhattan is awe-inspiring. We cannot help but wonder—marvel, if you will—as to the means by which such assessments are maintained over an *extended* period of time, in *all* sections of the borough, by *all* the department's appraisers. Is it possible that through some *weird coincidence* they *all* invariably err to the *upward* of actual market values? Is it possible that mistakes could occur so generally—and, insofar as those in control of the city government are concerned, so *fortuitously*? Because of their sworn duty to obey the mandate in the city charter, it could *not* be that commissioners and appraisers have been *instructed* to obtain funds to meet budget requirements through the avenue of overassessment. It could *not* be a deliberate evasion of the constitutional provision against real estate taxes in excess of 2% of assessed valuation. It could *not* be that Commissioners and appraisers have been *influenced* to *inflate* the city's borrowing capacity in order to evade the constitutional provision limiting municipal indebtedness to 10% of total assessed valuation.

In a recent attempted defense of overassessment the head of the Department of Taxes and Assessments followed departmental custom of recent years by trying to argue a tortured construction of the city charter's words, "under ordinary circumstances." The argument was advanced that these words refer to the economic conditions of what the department considers "normal" times, rather than to the circumstances of and at the time of the sale, and that recent and present economic conditions have been extraordinary. The matter of changes in economic conditions and the requirement

that assessments reflect such changes is covered not only by the quoted decision of the United States Supreme Court but by decisions in our own state supreme courts—notably in two recent cases decided by Supreme Court Justice Patterson. In the first of these, the learned justice declared:

"We do know real estate values change. It reflects the law of supply and demand the same as in other commodities and within a reasonable range assessments should reflect changed values as brought about by changed economic conditions, especially where the period of depressed values persists for a period of years."

Note how that fits in with the Supreme Court decision.

In the second case he repeated the above and went on to declare that:

"Real estate values in Westchester county generally have apparently been static at their depressed or diminished values for some five or six years past. Assessors cannot continue, in view of that changed standard of values, to appraise properties and assess them on the basis of an era of concededly inflated values. They must bring assessments in step with present-day demands for property."

Certainly gross overassessment is not being steadily maintained through ignorance on the part of taxing authorities of the facts regarding open-market sales. The head of the Department of Taxes and Assessments recently boasted a research bureau within the department having "more facilities for the collection of real estate information and the study of trends of prices and valuations than any other body in the city of New York." Surely they must possess accurate sales data.

The facts are quite eloquent as to the use made by the Tax Department of this fund of information. Of the 2,353 open-market sales recorded in 1937, 1,839 occurred prior to October 1, prior to publication of the tentative assessment roll for 1938. The prop-

erties sold at \$121,895,409 and were assessed in the aggregate at \$145,032,900. This record of sales in the open market during the first nine months of the year therefore shows that the properties sold were assessed at 119% of actual value. Despite the overwhelming proof that all open-market sales up to that time showed an average overassessment of 19% the tentative assessment roll handed down on October 1 revealed a paltry reduction of slightly over one percent in the total valuations of property previously assessed.

We have been dealing thus far only in averages, in totals reflecting the level of values for the borough as a whole. It might be well, however, to cite a few specific instances which emphasize—dramatize, if you will—the trends revealed by the totals.

Within the last few days the newspapers printed a story revealing the troubles of the executors of the estate left by the late owner of the Murray Hill Hotel. They stated in surrogate's court that they had been unable to sell the hotel—appraised for inheritance tax purposes at \$2,930,000—and that the best rental they had been able to obtain was *\$80,000 a year less than the taxes on the property*. It was assessed in 1937 at \$3,900,000. It is valued on the 1938 tentative tax roll at \$3,750,000.

On March 2, 1937, the American Savings Bank purchased for its own use the two 5-story brick buildings on a plot 39.9 x 100.5 at 125-127 West 42nd Street. They paid \$240,000. The property was assessed for \$465,000. In the 1938 tentative roll it appears that the Tax Commissioner has magnanimously granted a reduction of 5.4% in the assessed valuation, despite the evidence of overassessment of 193.7% of actual market value.

On January 7 last year there was recorded a sale by the Edbro Realty Company to the 536 West 163rd Street Realty Company of the three 5-story brick tenements on a plot 132.6 x 99.11 at

536-44 West 163rd Street, for a consideration of \$97,500. At the time of the sale the property was assessed at \$144,000 or 147.7% of its market value. The property appears on the 1938 tax roll at \$135,000, a reduction of only 6.2%.

On July 15, 1937, Mary L. Quackenbush sold to the Zephyr Holding Corporation the two 5-story brick tenements and stores located at 940 Columbus Avenue, for a total consideration of \$45,000. At that time the property was assessed at \$61,000, and in the tentative assessment roll for 1938 it appears at \$61,000, still assessed at 135.5% of its demonstrated market value.

A sale was recorded on September 30, 1937, by Hamilton Fish, Jr., to John T. Javatile, of the 3-story brick tenement and stores on the plot 23 x 70 at 39 Third Avenue, for a total consideration of \$9,000. The property was assessed at \$19,500. Despite the evidence of the sale, the 1938 tentative roll shows the property to be still assessed at \$19,500, 216.6% of its market value.

A few more samples of some of the discrepancies between sales-prices and assessments, between willing buyers and willing sellers and all are on the public records:

S. W. C. 57th Street and Madison Avenue sold by the H. H. Rogers Estate to the International Business Machine Company at \$1,100,000. Assessed at \$1,625,000. July 1936.

Surrounding the south corner of 78th Street and Fifth Avenue—sold by the Schiff Estate to a builder at \$300,000. Assessed at \$665,000. October 1937.

Nos. 954-955 Fifth Avenue sold by the Harding and Fahnestock Estates to Anthony Campagna for \$237,500. Assessed at \$650,000. November 1937.

Marshall Field property running through the block, 69th to 70th Streets, just east of Fifth Avenue; sold by Mrs. E. Marshall Field to builders for \$325,000. Assessed at \$990,000. July 1937.

N. E. C. 62nd Street and Madison Avenue, sold by the Henry Phipps Estate to an investor for \$275,000. Assessed at \$415,000. April 1937.

No. 808 Lexington Avenue, between 62nd and 63rd Streets, sold by C. C. Marshall to an investor for \$46,000. Assessed at \$70,000. January 1937.

No. 519 Madison Avenue, between 53rd and 54th Streets, sold by Mrs. Herzog to an investor at \$100,000. Assessed at \$140,000. February 1937.

Nos. 19-21 East 54th Street, sold by Arthur S. Vernay to Frederick Brown for \$175,000. Assessed at \$280,000. December 1937.

Nos. 11-15 East 54th Street, sold by Alice F. Drexel to Sumner Gerard at \$225,000. Assessed at \$380,000. January 1938.

No. 57 East 55th Street, sold by the Erdman Estate to Frederick Brown for \$80,000. Assessed at \$160,000. December 1937.

No. 15 East 67th Street, sold by the Cortland Field Bishop Estate to A. E. Erickson at \$80,000. Assessed at \$145,000. March 1936.

20-22 East 46th Street, sold at \$135,000. Assessed at \$310,000. August 1937.

Some of you probably have heard of the recent sale of thirty-four parcels by a very well known institution which I believe acquired these parcels by foreclosure and it has just sold them for \$60,000. These properties were assessed, I am informed, for \$353,500 and they consisted largely of old five-story tenements.

29 Park Avenue sold by Mrs. A. Murray Young to the Society for Improving the Condition of the Poor at \$51,500. Assessed at \$115,000. October 1937.

24 East 64th Street, sold by the Estate of Grayson M. P. Murphy to private party for occupancy at \$58,000. Assessed at \$105,000. December 1937.

120 East 60th Street sold by Vanderbilt Webb to an investor at \$30,000. Assessed at \$70,000. December 1937.

131 East 62nd Street sold by Oliver B. James to E. Van R. Wyatt at \$57,500. Assessed at \$90,000. October 1937.

59 East 64th Street sold by Helen V. P. Tallmadge to Henry I. Christal, at \$17,000. Assessed at \$40,000. September 1937.

59 East 66th Street, sold by Mrs. Joseph E. Sterrett to Arthur A. Beaudry at \$55,000. Assessed at \$70,000. July 1937.

11-13 East 63rd Street sold by the Mortgage Commission Realty Company to Turntree Corporation at \$83,000. Assessed at \$144,000. June 1937.

11 East 73rd Street, sold by the Pulitzer Estate to an investor, at \$252,500. Assessed at \$415,000. August 1937.

15 East 82nd Street, sold by Austin G. Fox to Mrs. Elvira Machado at \$59,000. Assessed at \$80,000. December 1937.

60 East 93rd Street sold by Mrs. Henry G. Davis for occupancy at \$175,000. Assessed at \$284,000. June 1937.

The Mutual Life Insurance Company sold the 5-story stone dwelling on a plot 25 x 100.5 at 14 East 62nd Street to Alfred H. Morehead, Inc. The deed, recorded August 31, 1937, shows a total consideration of \$85,000. The property was assessed at \$120,000. In the 1938 tentative roll it is assessed at \$116,000, a paltry reduction of 3.3% despite the sale's evidence of assessment at 141% of market value.

We must also face the painful fact that overtaxation is not the worst phase of overassessment. Far from it. Which observation brings us to the painful crux of the whole economically diseased situation. Overassessment operates to *depress* the value of the *very property* it seeks to *inflate*!

At a recent meeting of a real estate committee, James Felt, head of the firm of James Felt & Co., Inc., made the statement that he had bought a piece of city property for \$600. After a brief description, another in the group asked if he would take \$100 for his contract. Mr. Felt said he would, whereupon he was queried as to the figure at which the property was assessed. When he named \$4,000, the deal was off. There was no manner in which the property could be used, even at such a small investment as \$700, to make it earn enough to pay the tax bill on a four-thousand-dollar assessment. Had the property been assessed at \$1,200—or even \$1,500—it might conceivably have sold at around those figures. What such depression of value can mean to properties assessed in the hundreds of thousands of dollars staggers the imagination. As

will be readily seen from the above individual sales, many tax-payers are paying 6% and more on the present market value of their properties and in many cases the property does not yield this amount of income.

The value of urban real estate depends upon its net operating income. As long as overassessment is permitted to hamper the ability of existing structures to earn some return on the amounts invested, just so long will normal development be deferred and the construction industry remain stagnated—to the obvious detriment of the common weal, for it is generally conceded that the one thing needed to bring about complete economic recovery throughout the nation is a revival of activity in the construction industry.

There is no question that over-assessments act as a detriment to realty because it imposes a tax burden prohibitive of the economical employment of the property. Every cent taken in taxation means that the tax-payer has lessened income for productive enterprises such as improving his own property or in purchasing goods which create employment and in my best opinion these swollen assessed valuations are simply further tending to depress the values of real estate. If the voters wish the present expenditures of the City to continue, there is no question in my opinion that real estate has got to be relieved and relieved promptly as real estate is bearing an unjust share of the tax burden and other sources of revenue must be developed.

Tax-payers, to the extent of approximately 40,000, have through certiorari proceedings endeavored to get their unreasonable assessments reduced and many more would have brought certiorari proceedings except for the cost. In a recent proceeding, with which I am particularly familiar, the Referee, after numerous hearings, reduced the assessments for a period of four years on this specific

piece of property by some \$923,000 which has been confirmed by the Court, but in order to get his reduction the tax-payer had to go to an original cost of approximately \$5,000 to hire experts and will also have a lawyer's bill of something in the neighborhood of \$6,000-\$7,000 so that after these bills are paid, the saving will be very materially cut. It can be readily appreciated that there are few people who have the money and the time to go into an expensive operation which should be greatly simplified and expedited or made unnecessary with the co-operation of the City's authorities in reducing assessments to present market values.

In fact the City's authorities seem to fail to realize that they are representatives of the tax-payers and their salaries are paid for by the tax-payers.

I have been very much interested recently in some figures furnished for the cities mentioned, how the land assessments were reduced between 1928 and 1935, this being the last year available.

Chicago, Ill.	54.1%	Seattle, Wash.	29.6%
Cleveland, Ohio	52.1%	Duluth, Minn.	26.6%
Los Angeles, Calif.	41.9%	Spokane, Wash.	25.1%
Canton, Ohio	40.2%	Cincinnati, Ohio	23.7%
Toledo, Ohio	37.5%	Denver, Colo.	22.1%
Columbus, Ohio	34.8%	Trenton, N. J.	16.4%
Tacoma, Wash.	32.7%	Buffalo, N. Y.	9.7%

and so on down through numerous cities until we meet the Borough of Manhattan with a reduction of 1.3%.* These figures come from a reliable source. You are all familiar with the fact that between 1928 and the past year there has been a drop of 40% in most rents and a recovery of approximately 5%.

The per capita cost of municipal government in New York City has risen from \$39.08 in 1913 to \$78.19 in 1937.

*This information was secured through John E. Burton, Real Estate Consultant, Statistical Bureau, New York State Mortgage Commission Servicing Corporation.

Taxation policies affect stability. While it is readily admitted that real estate receives many governmental services and should bear its fair proportion of the tax burden, the fact still remains that a sympathetic and intelligent treatment of real estate by taxing authorities is essential if neighborhood stability is to be achieved. If taxes and special assessments are permitted to reach unreasonably high levels the net earning capacity of properties is so definitely impaired that the neighborhood decay is actually abetted. A wise tax policy is one in which the fundamental values of rateable properties are never injured.

No one may estimate where the damage resulting from over-assessment ends. Here in Manhattan, however, the degree of the evil itself can be accurately measured. The facts speak for themselves. They show average overassessment to the extent of 20.66% by the Tax Department's own method of gauging values. They show persistence in maintaining that gross overassessment on a *borough wide scale*, despite knowledge on the part of the Department of Taxes and Assessments of the overwhelming proof found in the record of actual, open-market sales. They clearly show the Department's *failure to consider the enormous diminution in the value of property*.

Does that array of facts prove intent on the part of the Department of Taxes and Assessments to *violate* fundamental rights *guaranteed* under the due process clause of the Fourteenth Amendment, within the meaning of the Supreme Court decision in the Great Northern case?

Do the facts convict the Board of Tax Commissioners of intent, *deliberate* intent, to violate the city charter, state statutes, state constitution, and Federal constitution, with the object of supplying the city government with funds in desired volume in complete dis-

regard of legal limitations? Do the facts indicate intent to inflate the city's borrowing capacity? Do the facts convict, or do they not?

I have two constructive suggestions. First, I believe in order to get any proper consideration, we must remove the adjustment of assessed valuations from all local influences and I would call attention to the fact that in the preliminary hearings and in fact all through any certiorari proceedings, the City and its local representatives attempt to justify the assessed valuations which have been arrived at by the Department of Taxes and Assessments. In the preliminary hearings, before the Department of Taxes and Assessments, the individuals who made the assessments are the sole judges as to whether they should be reduced.

I strongly believe and recommend that the real estate interests make every effort at the coming Constitutional Convention to provide for a State Tax Appeals Board appointed by the Governor and approved of by the Legislature as this plan has worked remarkably well in our neighboring State of New Jersey and I understand has worked remarkably well in Massachusetts in relieving taxpayers from unjust assessments.

Something must be done to remedy the unfairness of these methods of assessing properties, particularly in the midtown district of Manhattan and also in the complete breakdown of the facilities for handling certiorari cases which have permitted the number to aggregate over 40,000 with only about 3,600 a year being adjusted.

I also urge that because of this dangerous condition and with the burdensome taxes on real estate that the Mayor of the City appoint an outstanding committee of business men including bankers, lawyers, merchants and real estate men to consider the entire financial set-up of the City and make recommendations as to other sources of income which shall be used solely to relieve real estate

and not be used for other purposes. Also such committee should see why some of the recommendations of the Citizens' Budget Committee have not been put into effect. It seems to me a ridiculous situation that the real estate owners are penalized as shown by the above figures and are paying admittedly much more than the actual cost of furnishing water, and these same tax-payers, I understand, are contributing at least \$32,000,000 a year in furnishing subway rides in no small part to out-of-town users, who pay no direct taxes, in New York at a cost to them of substantially less than the actual cost of furnishing such service.

Members of the real estate profession and owners generally who are interested in correcting what appears to be a serious breakdown in the method of determining assessed valuations here, especially in Manhattan Island, should join forces with those who are doing their best to correct the unfair and unjust assessments to the end that the administration of the City's finances shall be performed with efficiency, expedition and economy, that the citizens of this great city have the right to expect of all well regulated public agencies and I shall be delighted to have any suggestions or criticisms that you care to make so that with the co-operation of The Real Estate Board and other civic associations, we can bring about a fair method of assessments and economic and prompt adjustment where errors have been made.



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